DOCUMENT RESUME

ED 330 430 PS 019 272

AUTHOR Harshbarger, Scott
TITLE Prosecution: An Effective Response to Child Abuse.
INSTITUTION Middlesex County District Attorney Office, Cambridge, MA.
PUB DATE 6 Oct 90
NOTE 8p.; Speech presented at the Annual Meeting of the American Academy of Pediatrics (59th, Boston, MA, October 5-10, 1990).
PUB TYPE Viewpoints (Opinion/Position Papers, Essays, etc.) (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Agency Cooperation; *Child Abuse; *Court Litigation; Crime Prevention; *Family Violence; Law Enforcement; *Sexual Abuse
IDENTIFIERS Criminal Prosecution

ABSTRACT

A district attorney of Middlesex County, Massachusetts, argues that prosecution is the most effective and appropriate response to child abuse cases. Two basic premises are advanced. First, anyone who physically abuses, sexually assaults, or rapes a child has committed a serious crime, regardless of the relationship of the victim to the offender. Second, the most prevalent crisis faced by the criminal justice system, and society as a whole, is not random violence in the streets, but violence perpetrated by individuals who are acquainted with their victims. Most violence is committed by males against women and children. Fathers, stepfathers, husbands, and live-in boyfriends act out in violence against victims who are in a familial or custodial relationship with them. Because other institutions have failed to address this problem effectively, the criminal justice system has become involved. As a result of criminal justice system involvement, the shroud of secrecy veiling the family has been stripped away. Law enforcement personnel now realize that a multidisciplinary approach is required if the problem is to be solved. Education and prevention, and not reliance on criminal prosecution, are the ultimate solution. Medical professionals and the criminal justice system must find ways to work together in the interests of children. (RH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE
DISTRICT ATTORNEY FOR MIDDLESEX COUNTY
CAMBRIDGE 02141

SCOTT HARSHBARGER
DISTRICT ATTORNEY
(617) 494-4050

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
X This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

ED330430

Scott Harshbarger
District Attorney
Middlesex County, Massachusetts

"Prosecution: An Effective Response To Child Abuse"

text of prepared speech before
The American Academy of Pediatrics
Annual Meeting
Boston, Massachusetts

October 6, 1990

I would like to thank The American Academy of Pediatrics for this opportunity to present my perspective as a prosecutor who deals each and every day with the tragedy of child abuse, one of the most serious and complex criminal justice and societal issues of the 1980's and 1990's. It is critical that all professional disciplines maintain an honest, open and constructive dialogue about coping with child abuse, as well as other critical issues affecting the family, such as domestic violence and elder abuse.

This forum provides an excellent opportunity for Dr. Eli Newberger, a national expert for whom I have tremendous respect and admiration, and myself, to relate our very different professional positions on the role of prosecution in handling child abuse cases. Five years ago, Dr. Newberger and I began this debate about the effectiveness of prosecution as an approach to child abuse in Chicago at a National Conference on Child Abuse and Prevention. After nearly eight years of prosecutorial experience in this area, I am more convinced now than ever before that the approach I will outline for you is the most effective and appropriate one that is presently available.

As background, there are approximately 1.4 million people in Middlesex County, Massachusetts. It consists of 54 cities and towns, and includes urban, suburban and rural communities. Because of the size and varied demographics of Middlesex County, I

PS 019272

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Scott Harshbarger
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

BEST COPY AVAILABLE

believe that it can serve as a microcosm for the country as a whole, and provide a reasonable sampling of what prosecutors are experiencing. In Middlesex County, in 1983, we had approximately 40 pending cases of child abuse. During the last year in Middlesex County, our Child Abuse Prosecution Unit investigated over 700 reports of child abuse. Our statistics show consistently that 95 percent of the allegations involve sexual abuse and in 95 percent of those cases, the alleged perpetrators are fathers, stepfathers, live-in boyfriends, or some other male who is either a relative or in a custodial relationship with the child. The numbers obviously represent a dramatic change between 1983 and today.

I believe that prosecution is the most appropriate response to child abuse. In fact, it may be the only effective response that is being made at this time because of the failure of other institutions to respond to this problem. I believe that unless we focus prosecutorial resources on these issues in an attempt to address them, we will never solve the problem of family violence. I believe that prosecution of child abuse cases does, in fact, vindicate the victims; it holds offenders accountable; it sends a message to the public about issues which all of us wish we did not have to face and which we have largely ignored. The victims of that ignorance have not been professionals but, unfortunately, have been generation after generation of children.

While I think it is appropriate to regularly review and re-evaluate our positions on these issues, and it is essential that you, as medical professionals, become involved in the dialogue, allow me to present the reasons for my strong perspective, as District Attorney and chief law enforcement officer in Middlesex County, on this topic.

I start with two basic premises. First, anyone who physically abuses a child, sexually assaults or rapes a child, has committed a serious crime, regardless of the relationship of the victim to the offender. That offender should be subjected to public identification, prosecution and sanctions, just as if a stranger had committed the crime. There is absolutely no legal or moral justification to do otherwise. Would any one of us question the prosecution of a stranger for sexually or physically assaulting a child? No, of course not. Then we should not treat any differently the prosecution of a family member. The relationship between the offender and the child victim should only be considered upon disposition of the case.

Second, the most prevalent crisis faced by the criminal justice system, and our society as a whole today, is not random violence in the streets, regardless of the public attention to that issue. The reality is that in Middlesex County, at least, the major problem of crime is violence within the family. Less than 20 percent of the serious violent crimes in my county are committed by strangers against other strangers. The overwhelming majority of violent crimes are committed by people who know their victims. The overwhelming majority of violence is committed by

males against women and children: fathers, step-fathers, husbands and live-in boyfriends acting out in violence against victims in a familial or custodial relationship with them.

I believe that unless we focus prosecutorial resources on these issues and address them, we will never solve the problem of family violence. We in the criminal justice system are, in fact, addressing these issues because other institutions, for whatever reason, have failed to address them effectively.

For our purposes, I would like to focus on these perpetrators who are family members. In 1983 we did not know much about these cases. Very few made their way into the criminal justice system. Did they not exist, or has something dramatic happened in the last six years that has caused males in family relationships to act out in violence against their children? The simple answer is that the Massachusetts Child Abuse Reporting Law was passed in 1983. Professionals who had reason to believe that children were being sexually assaulted were finally required to report to public authorities any allegations of child abuse. That is why we have uncovered the previously hidden crisis of child abuse. It is not because "ambitious" politicians have "ridden this horse to election." No one, I hope, believes that the physical or sexual brutalization of a child should have been hidden under this veil of secrecy for so long.

These child abuse cases pose great challenges for the criminal justice system, but they reflect a major social problem with which we must cope. We are shocked by them, we regret that they occur, and we may wish there were other solutions. But, in the interest of powerless, vulnerable children, these cases must be identified as the serious crimes that they are. Treatment, prevention, education and therapy are useful, important, additional parallel measures with which to address these issues, and they are to be encouraged as supplemental dispositional tools. But to date, standing alone or simply with the social welfare approach that Dr. Newberger prescribes, without the leverage of criminal prosecution and sanctions, they have utterly failed as an effective response to this problem.

Dr. Newberger's spirited but simplistic attack on prosecutors, attorneys and the court system is not only another version of "shooting the messenger," as he refers to it, but also reflects one of the major problems that we face in effectively working together to address this issue. Stereotypes, caricatures and mythology continue to dominate the world of the non-criminal justice professional in thinking about how the criminal justice system and the court system respond to the issue of child abuse. I respect Dr. Newberger's position and I understand many of his concerns. I, too, wish we could find a way to address the root causes of family violence; I, too, wish that we could achieve

greater social and economic justice; and I, too, wish there were no inequities in our society. But I see no justification for waiting for the millenium -- for letting another generation of children be victimized and suffer in silence.

There have been major reforms and responses in the criminal justice system to the issue of child abuse, recognizing it as a serious and complex problem. We have responded. If the rest of this society had responded as aggressively, effectively and sensitively to the problem of child abuse as the criminal justice and law enforcement system has, we would be much farther along towards finding an effective long-term solution.

Let me identify three positive developments that I believe have occurred as a result of the involvement of the criminal justice system with this issue.

First, we have pierced the family veil and the shroud of secrecy has been stripped away. Children no longer need to suffer in silence. The criminal justice system and law enforcement now provide a place for victims and victims' families to turn in times of need.

Second, we have learned that law enforcement and prosecution alone will never solve this problem. The key is a multidisciplinary approach. The historical mistrust and often philosophical differences that existed among human service practitioners, medical professionals and law enforcement officials may still be there, but we have been forced by the tragedy of child abuse to work together in a partnership in the interest of the children. We in the criminal justice system have benefited immensely from the cross-disciplinary partnership that now exists. We have been sensitized; we have received training; and we are far more able to do our job now than ever before. Every year we have improved. To some extent the cases that Dr. Newberger references are now part of history, to be remembered but not allowed to dominate the present discussion. In fact, in our county, with the development of the SAIN (Sexual Assault Investigation Network) teams, the multidisciplinary approach and our specialized Child Abuse Prosecution Unit, we have achieved a very positive, cooperative working relationship that has made a tremendous difference in the treatment of children in the criminal justice system.

As I mentioned, we have a specialized Child Abuse Prosecution Unit where Assistant District Attorneys are specially trained to work with children. We also have child interview specialists and victim witness advocates who provide support and assistance to children every step of the way in the investigative and prosecutorial process. They are absolutely crucial to appropriate handling of these cases. Further, every case in our county is reviewed by a multidisciplinary team to determine whether it should be prosecuted, and whether it is in the best interest of

the child to proceed with prosecution. The Child Abuse Prosecution Unit centralizes our efforts and communications with the other professional disciplines. This cooperation between law enforcement, social services and the medical community has made a tremendous difference. We have clearly benefited from the availability not only of Children's Hospital and its specialization in this area, but from the assistance of many other specialists, like Dr. Newberger, as well. The expertise did not have to be developed; it was already here. We simply had to learn to utilize it.

I would like to mention the highly-publicized McMartin case, which I now consider "ancient" history. It represents a total failure of the court system - an approach that is archaic and does not exist anymore in most states. Unfortunately, the medical expert in that case and hundreds of children were the victims of that criminal justice system. We have all learned from McMartin. One of the things we learned is that we can adapt the court system and courtroom to accommodate children. We make a special effort on behalf of child victims in Middlesex County, which we began with the highly-publicized Fells Acre Day Care Center cases, to adapt the courtroom to children's needs when they testify in court. This experience has also helped us to adapt it to adult victims for whom the court system also can be a hostile environment.

We also believe very strongly in "priority prosecution;" that is, in targeting these cases for expedited movement towards trial, with the same Assistant District Attorney handling the case from initiation to disposition. This so-called "vertical" representation makes a significant difference, but the key is the provision of a victim witness advocate, who provides support to the child victim all the way through the process. Support mechanisms that were previously non-existent are now firmly in place in the system.

The final critical component in achieving our goal of prevention of child abuse is education and training. The Middlesex County, Massachusetts Child Abuse Project has provided training throughout this county and the state to various professionals working in this area. Education and prevention are ultimately the solution, not reliance on criminal prosecution. Too often today, the simplistic solution to a complex societal problem is wrongly perceived to be criminalization and prosecution.

At this point, I would like to make some observations specifically geared towards this audience of medical professionals. It has become clear to me as a prosecutor that despite the presence of mandatory child abuse reporting laws for professionals in most states, compliance with the law among private pediatricians is a serious problem which must be addressed. For example, I previously mentioned our law in Massachusetts which mandates that a professional who has reason to

believe that a child has been physically or sexually assaulted must report it, whether or not he or she believes in it philosophically. The law is clear; the judgment has been made that these cases shall be reported to the Department of Social Services (DSS). In cases of rape or indecent assault of a child. death of a child or serious brutalization of a child, the case must be reported by DSS to the District Attorney for review, and prosecution, if appropriate. Our problem is that many professionals still believe this system will further stigmatize, traumatize and damage the child in every way. Therefore, private professionals are all too often making their own judgments about when they will make these mandated reports. Whatever the merits may be, it is the law. I happen to believe it is an appropriate law, because it has raised the level of public consciousness in a way that never would have happened in its absence.

I think that very few professionals have taken the time, or had the interest, to really find out how the criminal justice system works today. I know that many are still skeptical about the process. But the fact is that we have demonstrated in hundreds of cases, year-in and year-out, that we can not only protect and support children, but that we will make decisions in the children's best interest. Many of us believe, with the help and concurrence of mental health professionals, that prosecution is often a very useful first step in a therapeutic process for the child and for the family, if they are adequately supported. Most mental health professionals that I deal with believe that the leverage which prosecution provides and the clear message to the offender that his acts were wrong and criminal, is important to deterrence and treatment. Additionally, we must show the children who have been abused, mistreated or sexually assaulted that they were not at fault, that they were not the guilty parties. Many professionals are doing what they accuse attorneys of doing. They are allowing the children, subtly or otherwise, to believe that their lives and interests are not as important as the adults', feeding the perception that we have tried to defeat in the criminal justice system - namely, that children cannot be believed. Children are entitled to be believed because 99 percent of the allegations that we get about child abuse from children prove to be true. We may not be able to prosecute all of those cases for various reasons, but there is no question that the children are telling the truth. Most of us as adults still do not want to believe that; we would like to believe that these are isolated incidents committed only by adults with serious aberrational problems. Sadly, that is not the case.

Clearly, we must work together. No one believes that we can solve this problem by prosecution alone. I, as a public prosecutor, stand today at a time of the worst fiscal crisis in this state, and tell you that as much as we need prisons, as much as we need prosecutors, if we do not provide early intervention services for children and family support programs, if we do not support the medical and professional communities, public and

private, it does not matter what else we do because we are going to fail in our efforts to effectively protect the public.

The best form of public protection is early intervention, treatment, education and prevention. We must support these initiatives and those of us in positions such as mine have a responsibility to play an active role. The public may only want to hear about the "bottom line" of public protection and fiscal restraint. The reality is that it costs significantly more money to deal with the cases when they get to my point in the system, as opposed to spending a fraction of that amount earlier and more effectively to provide support and care. But we would never have identified this problem if cases were not reported to the criminal justice system in the first place.

We have learned a great deal during the last decade. Family violence is no longer shrouded in secrecy and vulnerable child victims are no longer allowed to suffer in silence. Would anybody seriously believe today in this society that if a wife is battered by her husband, the law has no role to play in vindicating her rights and expressing very clearly to the male in that relationship that his actions constitute a crime? That the male is not immune from prosecution for acts that, if committed by strangers, would surely have been recognized and prosecuted as crimes? Why, then, should we, supposedly in a paternalistic, benevolent way in the "interest" of children, allow them to have fewer rights? All of us, including Dr. Newberger, have spent much of our careers asserting the equality of rights of children. Those rights include being protected and being allowed to live life without the fear or reality of being physically or sexually assaulted by adults who supposedly love them.

Prosecution is a crucial ingredient in our overall response to child abuse. It will never solve the problem alone, but we must find ways to act together in the best interest of our children. We owe them, and they deserve nothing less.

Thank you very much.